

FILED

JUN 19 2006

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

**CATHY A. CATTERSON, CLERK
U.S. COURT OF APPEALS**

FOR THE NINTH CIRCUIT

VIDEL McGEE,

Plaintiff - Appellant,

v.

A. J. PFADT; et al.,

Defendants - Appellees.

No. 04-17027

D.C. No. CV-02-00593-FCD

MEMORANDUM^{*}

Appeal from the United States District Court
for the Eastern District of California
Frank C. Damrell, District Judge, Presiding

Submitted June 12, 2006 ^{**}

Before: WALLACE, KLEINFELD, and BERZON, Circuit Judges.

California state prisoner Videl McGee appeals pro se from the district court's judgment in favor of defendants in his 42 U.S.C. § 1983 action alleging excessive force in violation of the Eighth Amendment. We have jurisdiction

^{*} This disposition is not appropriate for publication and may not be cited to or by the courts of this circuit except as provided by 9th Cir. R. 36-3.

^{**} The panel unanimously finds this case suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2).

under 28 U.S.C. § 1291. We review de novo a district court's grant of summary judgment. *Morrison v. Hall*, 261 F.3d 896, 900 (9th Cir. 2001). We affirm.

McGee does not dispute that he failed to follow an officer's order to put his hands behind his back and that the injuries were inflicted in the course of getting McGee under control and handcuffing him. The district court properly granted summary judgment on McGee's excessive force claim because McGee failed to raise a genuine issue of material fact as to whether defendants acted "maliciously and sadistically for the very purpose of causing harm" rather than in a "good faith effort to maintain or restore discipline." *Whitley v. Albers*, 475 U.S. 312, 320-21 (1986).

AFFIRMED.